

Salmon Bycatch Workgroup meeting minutes

The NPFMC Salmon Bycatch Workgroup convened at 9am on November 2, 2007 at the Hawthorn Suites in Anchorage, AK.

Members of the workgroup were the following:

Stephanie Madsen, co-chair
Eric Olson, co-chair
Becca Robbins Gisclair
John Henderschedt (for Karl Haflinger)
John Gruver
Jennifer Hooper
Robin Samuelson (for Paul Peyton)
Michael Smith

Staff assisting in the meeting and members of the public in attendance included the following:

Diana Stram (NPFMC), Cathy Coon (NPFMC), Jason Anderson (NMFS), Demien Schane (NOAA GC), Alan Haynie (NMFS AFSC-by phone), Scott Miller (NMFS RO –by phone), Nicole Ricci (Dept of State-by phone), Martin Loeffland (NMFS AFSC), Herman Savikko (ADF&G), Don Rivard (USFWS/OSM), Russ Holder (USFWS), Dan Bergstrom (ADF&G), Karen Gillis (BSFA), Brent Paine (UCB), Lenny Corin (USFWS), Gerry Davis (YDFDA), Craig Fleener (BSFA), Sheldon Katchatag (Unalakleet), Patricia Graham (AQS EHS) and Art Nelson(CVRF).

The attached agenda (appendix 1) was adopted for the meeting. Documentation was provided to participants in advance of the meeting and is not repeated here as Council staff will be updating this information and providing it in the Council notebooks for December.

Diana Stram (Council staff) first provided an overview presentation of the objectives for the meeting which were to review the Council's motion from October 2007 (attached as appendix 2) and where adoption of this motion would differ from SBW recommendations on refining the alternatives in August. There were two main aspects to the Council motion: 1- changes to the formulation of the proposed caps by species, and 2-proposed sector split of any cap. These two items (cap formulation changes and sector split) were the primary focus of this meeting with the intention that the SBW would review these and make recommendations to the Council for the December 2007 meeting.

Diana Stram then provided an overview of the background materials which made available in advance of the meeting to facilitate discussion. These materials included information on salmon bycatch in the pollock fishery since 1991, proposed cap numbers and ranges based upon the Council's October 2007 motion and the SBW recommendations from August, pollock fishery sector catch of salmon species from 2003-2007 and a comparison of proposed cap ranges with actual sector catch from 2003-2007.

Committee Discussions

The workgroup first discussed the changes as presented by staff on cap formulation alternatives. The changes in the range of numbers for Chinook cap alternatives were discussed. The October Council motion leads to a more narrow range of numbers under consideration by removing the

percentage increases above historical averages and specifically caps the upper limit at 87,500. Some members of the workgroup felt that this provided too much of a restriction on the range of numbers under consideration for the analysis. Others felt that this was the appropriate upper limit for consideration. Further discussion of this and the committee's recommendations to the Council are included later in this report.

Mike Smith requested clarification of the responsibilities and obligations of the Council under the Pacific Salmon Treaty (PST) and the Yukon River Agreement (Annex IV Chapter 8 of the PST). Nicole Ricci of the US State Department (Department) was available by phone for the meeting. She noted that this is a significant treaty and when once a treaty is ratified by the US, implementing legislation is typically enacted to provide for domestic implementation of the treaty obligations. Pursuant to U.S. implementing legislation for the Yukon River Agreement the Yukon River Panel (Panel) recommendations are advisory in nature. The Panel cannot dictate to the Council but can advise on what they believe to be the appropriate course of action. Unless there is an express intent to the contrary in the treaty, treaty interpretations, including the scope of treaty obligations, is left to the Parties. The State Department is currently investigating the Yukon Panel Agreement and its obligations in relation to questions posed by the Panel regarding salmon by-catch in the U.S. Exclusive Economic Zone. The Department notes that the rate and amount of salmon by-catch, caught by U.S. fisheries, and its impact on the salmon fishery is presently being addressed at the NPFMC. This process has not yet concluded and no determination on impacts to the treaty can be made until the process has completed.

She further explained that the Council may manage the fisheries in an effort to comply with the treaty. How they choose to meet and implement this is at the discretion of the Council based upon balancing management objectives and available data. The Panel may recommend a course of action to the Council which is advisory in character and may be taken under consideration by the Council in conjunction with other factors. The Department would become involved if a Party to the treaty initiated consultation or clear and definitive information is available to indicate that these obligations are not being met. The outcome of any investigation or consultation by the Department is not yet known. She noted that this has not yet reached the level of a consultation and is currently being investigated based on the Panel's letter to the NPFMC. She indicated that the Department believes it would be helpful if additional information on the amount and origin of stocks taken as bycatch from the Yukon and other western Alaskan river systems was collected and available. Diana Stram explained the Council timeline for analysis and process by which information is being currently compiled for analytical purposes. She indicated that the most recent information on relative stock of origin and estimation of impact of bycatch levels on adult equivalents for each western Alaskan river system, to the extent possible based upon the available data, will all be included in the analysis put forward for Council review. This is currently scheduled for review by the Council in June 2008.

Demien Shane of NOAA GC concurred with the opinion of the State Department noting that while NOAA GC provides direction to the Council on their NEPA and MSA obligations, only the Department of State can determine whether or not treaty obligations are being met.

Robin Samuelson requested clarification on what triggers a consultation on Washington or Oregon endangered stocks. Nicole Ricci replied that the Yukon Agreement does not cover any stocks outside of the Yukon River. The larger Pacific Salmon Treaty covers those endangered stocks. In general the triggering of a State Department consultation is typically initiated by a Party to the Agreement.

The committee had further extensive discussions of the motion to include a sector split on any salmon cap (hard cap or trigger cap). Diana Stram presented information to the committee on the break-down of a sector split by species based upon the range of numbers under consideration by both the SBW recommendations from August and the Council's motion in October. These proposed cap numbers (assuming the sector split as laid out in the Council motion of 40% catcher processor, 10% mothership, 40% catcher vessel/shoreside) were compared against actual catch by sector from 2003-2007 to date to give a likely indication of constraint. Under either suite of alternatives considered, the low end of the range by species would constrict all sectors in most years. The high end of the ranges under consideration exerts a constraint on the catcher vessel fleet for most years for both species. These results were presented for discussion purposes only at this time at the request of the Council for the SBW to discuss potential sector split options. Eric Olson noted that CDQ information needs to be included into any proposed sector split as well as this was neglected in the Council motion.

Some clarifications were requested of Council staff for the December meeting (to the extent possible) in order to better understand the goals, objectives and potential impacts of a sector split:

- Input from NOAA GC and enforcement on ability to shut down fisheries for exceeding a cap and at what level this is conceivable (single cap on fishery, sector split, coop split within sectors)
- What is the regulatory authority to lease quota between coops and between sectors
- How will CDQ be treated under any cap formulation
- What is the age distribution of the bycatch by sector and to what extent is it disproportionate by sector

Council and agency staff indicated their intent to address as many of these issues as possible for discussion purposes for the Council in December.

The committee reviewed the revised problem statement from the October 2007 Council meeting. **The committee approved of the problem statement, noting that the committee may wish to review it again at a subsequent meeting once the alternatives have been finalized.**

Committee recommendations:

The committee chose to make recommendations to the Council on three specific issues:

- 1) CDQ allocation under any cap
- 2) Sector split of any cap
- 3) Cap formulation changes

Note that of these three topics, the SBW had consensus agreement on only the CDQ allocation issue. For the other two issues, the respective arguments for differing points of view are represented below and where applicable (cap formulation for Chinook) a majority vote included.

1) CDQ Allocation:

The SBW recommends that the analysis consider equal treatment by the CDQ program under each alternative. The intent is that any alternative under consideration would be no more restrictive than the other options to CDQ. *This recommendation was unanimous.*

2) Sector Split

The SBW was divided on the issue of recommending the inclusion of any sector split of a proposed cap in the alternatives for analysis (per Council motion October 2007).

The following arguments were put forward for *including* a sector split in the alternatives:

- A) There may be disproportionate harvest by age or stock of origin by different sectors of the fleet. If this is the case, then a split cap will provide better conservation for salmon stocks than would be provided by a single cap across the entire fleet.
- B) A sector split provides a better means to balance the need to conserve salmon with the goal of allowing the fishery to operate. If a cap is split amongst sectors then some portion of the fleet can continue to fish when others have curtailed fishing operations due to exceeding their allocated salmon. This provides a better balance between the needs of western Alaskan salmon and salmon users and maximizing benefits to the pollock fleet than is provided by a single hard cap.
- C) Analytically, evaluating only a hard cap would focus solely on times when the fishery as a whole would be shut down when practically speaking under the ICA some division of a cap would occur internally. However this division of the cap would not be included in the analysis unless explicitly in the alternatives.
- D) Historically high numbers of Chinook are not a good indication that the ICA is evaluating the best means of reducing bycatch nor that they would establish adequate means to divide a cap internally.
- E) A sector split together with the ability to transfer pollock across sectors or coops provides the best means of catching pollock and constraining the overall number of salmon. It also promotes individual accountability where currently this is lacking.

The following arguments were put forward for establishing a single cap that is not split amongst the fleet by sector or otherwise:

- A) If the Council chooses to go with a single hard cap limit, they would select a number which they felt was representative of the threshold level after which the reproductive capacity of the western Alaskan salmon stocks would be compromised by the pollock fishery. Exceeding this number would represent a conservation concern. Subdividing this number by a sector split does not further the conservation goals of the Council. Rather it compromises the fleet's ability to manage bycatch and forces the Council into an unnecessary allocative decision. The workgroup should be focused on recommending means to conserve salmon not reallocation of pollock.
- B) A Sector split would remove the flexibility to operate under the VRHS system effectively. Any further split of a cap should be contractually within the ICA. Further any restriction of the operational aspects of the ICA constrains creativity in trying to avoid bycatch. The ICA should be given the opportunity to explore alternative penalty mechanisms to the VRHS.
- C) If a sector split were awarded based on catch history than it would reward bad behavior rather than rewarding low bycatch
- D) A split cap would create a race for fish within the allocation and ensure that everyone reaches their cap each year.
- E) Any split with the consideration of transfer of catch across sectors is not believed to be legal thus there is no reason to include an alternative that is legally deficient.

3) Cap formulation.

The committee discussed the differing ranges of numbers resulting from the SBW recommendations to the Council in their August 29, 2007 report and the Council's October 2007 motion. The committee specifically focused on the Council motion recommending an upper limit for Chinook of 87,500 and inclusion of the incremental percentages (above and below) the historical averages and the highest year in the alternatives for cap formulation. The committee

was divided on this issue and did not have consensus on the recommendations to the Council with respect to cap formulation

Arguments for continuing to include the incremental percentages and highest years (and not capping Chinook at 87,500) noted that:

- A) A broader range of alternatives is more appropriate analytically and would provide an improved cost-benefit analysis on the range of options. Under the Council motion, the alternatives provide a wide range on the low end of the caps and no equivalent range on the higher end.
- B) The Council has not yet discussed actual numbers resulting from the alternative cap formulations, thus their motion was premature in restricting the range under consideration. The Council was instead provided the concepts for the SBW recommendations but not the actual numbers that were calculated based on these recommendations (Note: these were provided during this SBW meeting and were not available at the time of the October Council meeting). These numbers should be presented and discussed by the Council openly prior to taking action to restrict the range under consideration.
- C) The ITS is an artificial cap that is connected to an ESA consultation on endangered Chinook stocks in OR and WA only. It is not relevant as an upper limit on western Alaskan salmon stocks.

Arguments for incorporating the language suggested in the Council motion from October (which caps Chinook at 87,500 and narrows the range of numbers for both species under consideration) include:

- A) There is no justification for going above historic levels (by including the percent increase options) given the combination of potential impacts to already depleted salmon stocks with the current decline in the pollock TAC,
- B) Any number in excess of 87,500 would conceivably violate National Standard 9 and the Endangered Species Act. Further any number in excess of pre-2002 numbers could violate the United States' treaty obligations under the Yukon River Salmon Agreement.

After further discussion, one member of the workgroup requested a specific vote on the inclusion of 87,500 as an upper limit for the forthcoming analysis on Chinook bycatch. After much discussion, the SBW voted 5-3 (with one abstention) in favor of truncating the range of cap limits for Chinook at 87,500.

The meeting adjourned at 2:30pm.

Appendix 1 Agenda: Salmon Bycatch Workgroup meeting

NPFMC Salmon Bycatch Workgroup meeting

November 2, 2007

Ballroom B, Hawthorne Suites,

1110 West 8th Avenue

Anchorage, AK

Draft Agenda

Meeting objective: To review NPFMC motion from October 2007 and provide recommendations to the Council on BSAI salmon bycatch cap formulation.

9:00am- 2:00pm (*continue as necessary after 2pm*)

Topics to be addressed:

1. Overview of Council action in October 2007
2. Discussion of cap formulation alternatives:
 - a. Comparison of cap results as proposed by workgroup (Aug 2007 recommendations) with Council suggested revisions (October 2007)
3. Discussion of proposed sector split from Council motion
4. Additional options/proposals from the workgroup
5. Committee discussion and recommendations

Appendix 2 October 2007 BSAI Salmon Bycatch Motion

Council Bering Sea Salmon Bycatch Motion to address cap formulation and additional recommendations for the analysis:

Forward the following issues to the Salmon Bycatch Working Group, requesting that they consider the following options to address salmon bycatch in the Bering Sea pollock fisheries and report back to the Council at their December 2007 meeting.

Chinook and other salmon bycatch caps representing the following years be developed:

Cap formulation alternatives:

1. Establish Chinook and non-Chinook salmon caps based on:

Average historical bycatch

- i. 3 years (2004-2006)

Option: 20% increase for non-Chinook

- ii. 5 years (2002-2006)

- iii. 10 years (1997-2006)

Option: drop year 2000

Option: drop year 2006

2. Set cap relative to salmon returns: (To determine specific salmon stock impacts from bycatch)
3. The 2007 Incidental Take number (87,500) will be included in the analysis and serve as the upper limit cap for Chinook salmon bycatch in the analysis.
4. International treaty considerations for Chinook salmon

Average historical bycatch pre-2002

- i. 3 years (1999-2001)

- ii. 5 years (1997-2001)

- iii. 10 years (1992-2001)

Status quo in the alternatives will be described as the VRHS system with the existing exemption to the CSSA closures. An option will be explicitly added to the alternatives for new closures which would likewise allow for an exemption for the fleet to these new closures.

Additional rate-based breaks will be considered in formulating criteria for identifying closures such that a more defined and consistent range of rate breaks are considered (e.g. 0.1, 0.2, 0.3, 0.4,...)

Staff will develop a method to apportion caps by closure area in a way that minimizes bycatch (e.g. to evaluate separate trigger caps by closure area apportioned according to the overall limit) as well as a single cap which triggers multiple areas.

The Work Group will examine dividing the final cap by sectors (50% shore based CV fleet; 10 % for the mothership fleet and 40% for the offshore CP fleet). The sector allocations of Chinook salmon bycatch will be divided up by pollock coops within each

sector based upon the percent of total sector pollock catch their coop allocation represents. When the Chinook salmon coop cap is reached, the coop must stop fishing for pollock and may lease their remaining pollock to another coop (inter-cooperative transfer) within their sector for that year (or similar method to allow pollock harvest with individual coop accountability).

The Work Group will also consider developing a new suboption in conjunction with a hard cap or trigger that proposes alternative management measures to remain beneath a proposed cap (with or without closed areas).

The Work Group should be expanded to include a State of Alaska Board of Fisheries member.

Lastly, the Council adopts the proposed Problem Statement as modified by the AP.